

PRIVY COUNCIL REPORT**THE "AUGUST 8TH";
THE "AUGUST 8TH" OWNERS v.
COSTAS BACHAS**

[P.C. (Lord Fraser of Tulleybelton, Lord Bridge of Harwich, Lord Brandon of Oakbrook, Lord Brightman and Sir John Megaw) November 22, 1982 & January 11, 1983]

[Privy Council Appeal No. 17 of 1981]

Practice and Procedure – Admiralty action in rem – Whether Order 14 procedure available – R.S.C., 1970, 0.14 r.1.

Shipping Law – Order 14 procedure available to plaintiff in admiralty action in rem.

The respondent, the former master of the ship "August 8th" commenced an Admiralty action *in rem* in Singapore making claims by the master and claims for cash advances to crew, for disbursements and port/expenses. The writ was served on the ship. The shipowners entered an unconditional appearance. The respondent then applied for summary judgment under Order 14 of the Rules of the Supreme Court, 1970. The Registrar made an order that the appellants, the shipowners, be at liberty to defend the action on payment of security for the total sum claimed and that in default of payment of such security, the respondent be at liberty to enter final judgment. As security was not provided, judgment was entered against the appellants. The appellants applied for an order to set aside the judgment on the ground *inter alia* that the Registrar had no jurisdiction to hear an application for summary judgment under Order 14 in an Admiralty action *in rem*. Choor Singh J. dismissed the application ([1980] 2 M.L.J. 179). The appellants appealed to the Court of Appeal which dismissed the appeal ([1981] 1 M.L.J. 132). The appellants appealed to the Privy Council. The sole question in the case was one of jurisdiction and it is this: by the law of Singapore is a plaintiff in an Admiralty action *in rem* brought by him in the High Court entitled, after he has served a statement of claim on the owners of the property proceeded against and they have entered an appearance in the action, to avail himself of the provisions of Order 14 of the Rules of the Supreme Court, 1970, in order to obtain, if he can, a summary judgment against such owners?

Held: (1) it is clear beyond doubt that on the true construction of Order 14 of the Rules of the Supreme Court, 1970, an Admiralty action *in rem* as that brought by the respondent in this case, as well as an Admiralty action *in personam*, is a kind of action in which a plaintiff is entitled to avail himself of the provisions of Order 14, and in which the court, if satisfied with regard to the merits of the case, has power to give a summary judgment under that Order;

(2) the distinction between the procedure for obtaining judgments in default of appearance or defence in Admiralty actions *in rem* on the one hand and the procedure for doing the same in other kinds of action on the other hand has no bearing whatever on the question whether Order 14, which is not concerned with judgments in default of appearance or defence at all, but solely with

A summary judgments, applies to Admiralty actions *in rem* as well as to other kinds of action;

(3) the situation as it now exists under the present Rules of the Supreme Court in England cannot have any bearing whatever on the situation which exists under the differently worded Rules of the Supreme Court of Singapore, 1970;

B (4) even, if contrary to the views expressed earlier, an Admiralty action *in rem* were excluded from the scope of Order 14, it would be impossible to regard an Admiralty action *in personam* as similarly excluded. Insofar therefore as from the time of the shipowner's appearance, the master's action continued against them as an action *in personam* as well as an action *in rem*, it was clearly a kind of action to which Order 14 applied.

Case referred to:

(1) *The Gemma* [1899] P. 285 at p. 292.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

D Michael Thomas Q.C. (Jeremy Russell with him) for the appellant.

Haridass Ajaib (Anwarul Haque with him) for the respondent.

Cur. Adv. Vult.

E Lord Brandon of Oakbrook (delivering the Judgment of the Board): This is an appeal from an order of the Court of Appeal in Singapore (Wee Chong Jin C.J., Kulasekaram and Rajah JJ.) dated 3rd November 1980.

F The appellants were in January 1978 the owners of a ship then named "August 8th". Their Lordships will call her "the ship" and her owners "the shipowners". The respondent is Costas Bachas, formerly Master of the ship ("the master").

G On January 28, 1978 the master, acting through solicitors, served on the ship in Singapore harbour an amended writ in an Admiralty action *in rem* which had been begun by them shortly before on his behalf in the High Court of Singapore. On the front of the writ the property proceeded against was described as the ship "August 8th"; the plaintiff was named as Costas Bachas; and the defendants were described as the owners of the ship "August 8th". On the back of the writ there was endorsed an amended statement of claim, in which there were pleaded claims by the master for S\$22,577.48 for cash advances to crew, S\$36,804.90 for disbursements, and S\$2,273.63 for port expenses, making a total of S\$61,656.01. When the ship was so served, she was already under arrest in another Admiralty action *in rem* brought against her by her crew for wages. On

February 2, 1978 the shipowners, acting through solicitors, entered an unconditional appearance in the master's action.

On March 15, 1978 the master issued a summons for summary judgment under Order 14 of the Rules of the Supreme Court, 1970. By that summons the master applied for liberty to sign judgment against the shipowners in respect of revised and enlarged claims consisting of S\$22,577.48 for cash advances to crew, S\$39,078.53 for disbursements, S\$31,727.50 for his own wages, and S\$2,525.67 for monies paid to the Comptroller of Customs and Excise for offences committed by the crew, making an increased total of S\$95,909.18. On March 16, 1978 the master re-amended his statement of claim so as to plead the revised and enlarged claims referred to above. Then or later the re-amended writ and the Order 14 summons were served on the shipowners' solicitors.

On May 10, 1978 the master's Order 14 summons, after an earlier adjournment, was heard in chambers by Mr. Registrar Michael Khoo Kah Lip ("the registrar"). The registrar, having read affidavits put in evidence on either side, made an order to the following effect:

- (1) that the shipowners should be at liberty to defend the master's action on condition that they provided within 14 days of the date of the order security for the total sum of S\$95,909.18 claimed;
- (2) that, in default of such security being provided, the master should be at liberty to enter final judgment against the shipowners for that sum; and
- (3) that the costs of the application should be costs in the cause.

The shipowners did not satisfy the condition with regard to the provision of security imposed by the registrar, and accordingly on July 31, 1978 the master entered judgment against them for S\$95,909.18 in respect of his claims and S\$350 in respect of his costs.

On August 8, 1978 the shipowners issued a notice of motion in which they applied for an order setting aside the judgment entered against them by the master on two grounds:

- (1) that the registrar had had no jurisdiction to hear an application for summary judgment

A under Order 14 in an Admiralty action in rem; and

- (2) that the master had entered judgment for a sum greater than that due to him.

B The shipowners' motion was heard by Choor Singh J. in open court on January 25, 1980 when the judge heard argument from counsel on both sides. Subsequently, by an order dated February 4, 1980, he dismissed the motion with costs. No explanation was given to their Lordships of the extraordinary long delay between the issue and the hearing of the shipowners' application to set aside.

C By notice of appeal dated February 9, 1980 followed by a petition of appeal dated March 20, 1980 the shipowners appealed to the Court of Appeal in Singapore against the order of Choor Singh J. dated February 4, 1980. The Court of Appeal, after hearing argument from counsel on both sides, gave on October 16, 1980 a single judgment dismissing the appeal, to which all three members of the court were parties. Later, on November 3, 1980 a formal order of the Court of Appeal, dismissing the shipowners' appeal with costs, was drawn up.

D On January 12, 1981 on the application of the shipowners, the Court of Appeal made an order to the following effect:

- F (1) that the shipowners should be at liberty to appeal to this Board against the whole of the decision of the Court of Appeal given on October 16, 1980;
- G (2) that execution of the judgment entered by the master against the shipowners should be stayed pending the outcome of the appeal; and
- (3) that the costs of and incidental to the application should be costs in the appeal.

H Their Lordships are not concerned in this appeal with certain matters which either were raised, or else might properly have been raised, at earlier stages of the proceedings. In particular, subject to the question of jurisdiction to be referred to shortly, their Lordships are not concerned with the correctness of the registrar's order dated May 10, 1978 either with regard to the condition for leave to defend imposed by it, or with regard to the amount for which, in default of compliance by the shipowners with that condition, the master was given leave to enter judgment against them.

I

The sole question with which their Lordships are concerned in this appeal, as was the Court of Appeal in Singapore in the appeal to it from the order of Choor Singh J., is one of jurisdiction and it is this: by the law of Singapore, is a plaintiff in an Admiralty action in rem brought by him in the High Court entitled, after he has served a statement of claim on the owners of the property proceeded against and they have entered an appearance in the action, to avail himself of the provisions of Order 14 of the Rules of the Supreme Court, 1970, in order to obtain, if he can, a summary judgment against such owners?

Section 3(1) of the High Court (Admiralty Jurisdiction) Act of Singapore (Cap. 6) confers on the High Court of Singapore Admiralty jurisdiction to hear and determine a large number of questions and claims lettered from (a) to (r). It is not, and never has been, in dispute that the master's claims in the present action are within the Admiralty jurisdiction so conferred. Section 4(1) of the Act provides that such jurisdiction may in all cases be invoked by an action in personam. Section 4(3) provides that, in any case where there is a maritime lien on any ship for the amount claimed, the jurisdiction may also be invoked by an action in rem against that ship. The claims made by the master in his re-amended statement of claim in the present action are all claims in respect of which, assuming them to be valid, he has by the law of Singapore, as by the law of England, a maritime lien against the ship. It follows that the High Court of Singapore had jurisdiction to hear and determine all the master's claims either in an Admiralty action in personam or in an Admiralty action in rem.

Order 14 of the Rules of the Supreme Court, 1970, has the heading "Summary Judgments". Rule 1 of that Order provides:—

- "1. (1) Where in an action to which this Rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ ... apply to the court for judgment against that defendant.
- (2) Subject to paragraph (3), this Rule applies to every action begun by writ other than one which includes —
- (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
- (b) a claim by the plaintiff based on an allegation of fraud.
- (3) This Order shall not apply to an action to which Order 81 applies."

A Order 81, referred to in paragraph (3) of rule 1 above, deals with actions for specific performance.

The subsequent rules of Order 14 deal with the procedure to be followed in an application by a plaintiff under rule 1. In particular paragraph (1) of rule 4 permits a defendant to show cause against such an application, and paragraph (1) of rule 3 and paragraph (3) of rule 4 empower the court to take any one of three courses on the hearing of the application: first, to dismiss it; secondly, to give judgment for the plaintiff on the whole or part of the claim; and, thirdly, to give leave to the defendant to defend the action in relation to the whole or part of the claim, either unconditionally, or on such terms as to the giving of security or otherwise as the court may think fit.

D For present purposes the important parts of Order 14 are paragraphs (1) and (2) of rule 1, since it is those paragraphs which prescribe the kinds of action in which a plaintiff may apply for summary judgment under that order. The effect of paragraphs (1) and (2) of rule 1 is that a plaintiff may seek to obtain a summary judgment under Order 14 in any action begun by writ in which a statement of claim has been served on the defendant and the latter has entered an appearance, except for the seven particular kinds of action specified in sub-paragraphs (a) and (b) of paragraph (2), and actions for specific performance especially dealt with under Order 81.

It has not been suggested, and could not sensibly be suggested, that the master's action in the present case, being an Admiralty action in rem in respect of pecuniary claims included in the Admiralty jurisdiction of the High Court, falls within any of the exceptions contained in sub-paragraphs (a) and (b) of paragraph (2), or in paragraph (3), of rule 1 of Order 14 referred to above. That being so, it appears to their Lordships to be clear beyond doubt that, on the true construction of Order 14 of the Rules of the Supreme Court, 1970, an Admiralty action in rem such as that brought by the master in the present case, as well as an Admiralty action in personam, is a kind of action in which a plaintiff is entitled to avail himself of the provisions of Order 14, and in which the court, if satisfied with regard to the merits of the case, has power to give him a summary judgment under that Order.

Despite what appears to their Lordships to be this clear interpretation of rule 1 of Order 14,

counsel for the shipowners endeavoured to advance two arguments against the acceptance of such interpretation.

The first argument was founded on what was submitted to be a highly significant distinction between the rules relating to judgments in default of appearance or defence in Admiralty actions in rem, and the comparable rules relating to the same matters in other actions. In support of this argument attention was drawn to the fact that, whereas in actions other than Admiralty actions in rem, Orders 13 and 19 enable a plaintiff to enter judgment in default without first verifying his case by affidavit or otherwise and without making any formal application in open court, in Admiralty actions in rem, paragraphs (3), (4) and (7) of rule 20 of Order 70 expressly require a plaintiff to do both these things before he can obtain whatever judgment the court may then consider that he is entitled to be given. It was further pointed out in this connection that, by paragraph (1) of rule 1 of Order 70, the other provisions of the Rules of the Supreme Court, 1970, only applied to Admiralty actions subject to the provision of Order 70 and that paragraph (10) of rule 20 of Order 70 expressly excluded the application of Order 13 and Order 19 (except rule 1) to Admiralty actions in rem. The reason for this distinction, it was said, was one of policy. That policy was that, since a judgment in default of appearance or defence in an Admiralty action in rem was capable of adversely affecting other parties having interests in, or other claims against, the property against which the action in which any such judgment was given was brought any claim by a plaintiff to such judgment needed to be supported by evidence and presented in open court for the protection of such other parties.

In their Lordships' opinion this distinction between the procedure for obtaining judgments in default of appearance or defence in Admiralty actions in rem on the one hand, and the procedure for doing the same in other kinds of action on the other hand, has no bearing whatever on the question whether Order 14, which is not concerned with judgments in default of appearance or defence at all, but solely with summary judgments, applies to Admiralty actions in rem as well as to other kinds of action or not. Under the procedure prescribed by Order 14, which only applies at all after a defendant has entered an appearance in an action, the plaintiff is obliged by paragraph (1) of rule 2 to verify his claim by affidavit. More-

A over the defendant has at least the opportunity, under paragraph (1) of rule 4, to show, by affidavit or otherwise, that he has one or more defences to the plaintiff's claim and both parties are entitled to argue their respective cases for and against summary judgment being given. There is, therefore, no possibility in an Admiralty action in rem, any more than in other kinds of action, of a summary judgment on a claim being given without such claim having been first verified by affidavit evidence, and there is at least a considerable probability that the defendant, in an Admiralty action in rem as in other kinds of action, will seek to show that there are issues deserving to be tried, so that summary judgment should not be given but permission to defend, either unconditionally or conditionally, should be granted.

D The second argument advanced by counsel for the shipowners was that until 1975, under the Rules of the Supreme Court in England, Order 14, dealing with summary judgments, did not apply to Admiralty actions at all, whether in rem or in personam; and that, even when paragraphs (1) and (2) of rule 1 of Order 14 were amended in 1975, as they were, so as to extend the application of Order 14 to Admiralty actions in personam, express words were nevertheless inserted in sub-paragraph (c) of paragraph (2) of rule 1 so as to exclude the application of the Order to Admiralty actions in rem. The making of this exception was again said to be based on the considerations of policy discussed above in relation to the first argument.

G In their Lordships' opinion, the situation in this respect as it now exists under the present Rules of the Supreme Court in England cannot have any bearing whatever on the situation which exists under the differently worded Rules of the Supreme Court of Singapore, 1970. So far as the situation which existed in England before 1975 is concerned, there are historical reasons, derived from the organisation of the High Court in England in a number of separate divisions, which explain the fact that Admiralty actions, whether in rem or in personam, were formerly excluded from the scope of Order 14. As to the continued exclusion, even after the amendment of the relevant rules in 1975, of Admiralty actions in rem from the scope of Order 14, there may or may not be sensible reasons for it. But, whether there be sensible reasons or not for such exception, so far as English procedure is concerned, their Lordships can see no justification whatever for

importing it into paragraph (2) of Order 14, rule 1 of the Rules of the Supreme Court of Singapore, 1970, which do not, and it must be presumed intentionally do not, contain any such exception.

In their Lordships' opinion there is another ground additional to the other grounds already dealt with by them in this judgment, and not adverted to at any time in the previous course of the proceedings, on which the shipowners' appeal is bound to fail. By the law of England, once a defendant in an Admiralty action in rem has entered an appearance in such action, he has submitted himself personally to the jurisdiction of the English Admiralty Court, and the result of that is that, from then on, the action continues against him not only as an action in rem but also as an action in personam: *The Gemma*⁽¹⁾ per A.L. Smith L.J. at page 292. There is no reason to suppose that the Admiralty law of Singapore differs from the Admiralty law of England so far as this important principle is concerned. On the contrary there is every reason to suppose that it is the same. If then that principle is applied in the present case, the situation is that, from the time when the shipowners entered an appearance in the master's action, as they did on February 2, 1978 the action continued not only in rem against the property proceeded against, namely, the ship, but also in personam against the shipowners themselves. It follows that even if, contrary to the views which their Lordships have earlier expressed, an Admiralty action in rem were excluded from the scope of Order 14, it would in any case be impossible to regard an Admiralty action in personam as similarly excluded. Insofar therefore as, from the time of the shipowners' appearance, the master's action continued against them as an action in personam as well as an action in rem, it was clearly a kind of action to which Order 14 applied.

For all the various reasons which their Lordships have given the shipowners' appeal fails and must be dismissed with costs.

Appeal dismissed.

Solicitors: *Ince & Co.; Lloyd Denby Neal*

A SINGAPORE REPORTS

BANK OF AMERICA NATIONAL TRUST SAVINGS ASSOCIATION v. CHEONG HOON CHONG

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.)
April 23, 1982]
[Singapore — Civil Appeal No. 101 of 1980]

Bankruptcy — Charge stamped up to \$140,000 — Charge discharged — Claim for further sum of \$70,454.43 — Claim disallowed by trial court — Appeal — Outstanding debts on a simple contract — Appeal allowed.

Banking — Overdraft and trust receipt facilities — Debt owing in respect of — Limitation Act (Cap. 10), s. 26(2).

This was an appeal from the decision of the trial court (see [1981] 2 M.L.J. 303) dismissing the claim by the appellants/ plaintiffs against the respondent/defendant for the sum of M\$70,454.43 being the unsatisfied portion of a debt owing to the appellants in respect of overdraft and trust receipt facilities secured by a charge on property.

The plaintiffs were bankers and they granted the defendant and one Lao Kee Yam trading as Sharikat Alpha Associates overdraft and trust receipt facilities. The overdraft and trust facilities were secured by a registered charge dated November 21, 1969. The said charge was to secure up to M\$140,000 the credit facilities granted to Sharikat Alpha Associates. Lao became bankrupt on April 25, 1971. In March 1973 the plaintiffs commenced foreclosure proceedings. In May 1973 the plaintiffs received M\$140,000 from the Official Assignee on the understanding that the charge would be discharged by the plaintiffs.

The plaintiffs claimed for a further sum of M\$70,454.43 under the Clause 21 of the charge. The learned trial judge dismissed the claim on the ground that the said charge was only stamped up to M\$140,000 and in such circumstances, the chargors were only liable up to the amount covered by the stamping and no more. The plaintiffs appealed against the said decision.

Held, allowing the plaintiffs' appeal: (1) the merger of a simple contract debt into a specialty debt depended on the intention of the parties, which is to be gathered from the documents they have signed. Clause 21 of the charge clearly indicated that there was to be no merger and the contractual rights of the plaintiffs as against the defendant were preserved. When the charge was discharged the outstanding indebtedness of the defendant on a simple contract remained;

(2) the plaintiffs' claim was not barred by limitation as there was an acknowledgement of the debt by the defendant addressed to the Official Assignee and dated April 1973. A carbon copy of the said letter was sent to the plaintiffs' solicitors by the defendant's solicitors who had the authority to act on the defendant's behalf. The said letter constituted a good acknowledgement within the Limitation Act.

Cases referred to:

(1) *Barclays Bank Ltd. v. Beck* [1952] 2 Q.B. 47.